

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

KENNETH RAY BENCE,

Plaintiff,

v.

MICHAEL WOMBLE, et al.,

Defendants.

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Case No. CIV-21-558-J

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this action pursuant to 42 U.S.C. § 1983. The matter was referred to United States Magistrate Judge Gary M. Purcell for initial proceedings consistent with 28 U.S.C. § 636. [Doc. No. 3]. On August 3, 2021, Judge Purcell issued a Report and Recommendation recommending that this case be dismissed without prejudice pursuant to the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971), and Plaintiff's appeal of a state court decision that is currently pending before the Oklahoma Court of Criminal Appeals. [Doc. No. 10]. Plaintiff was advised of his right to object to the Report and Recommendation by August 23, 2021. No objection has been filed. Plaintiff has therefore waived any right to appellate review of the factual and legal issues in the Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 10] and DISMISSES this case without prejudice based on Plaintiff's pending appeal in state court and *Younger*.

IT IS SO ORDERED this 13th day of September, 2021.

A handwritten signature in blue ink, appearing to read "B.M.J.", is written above a horizontal line.

BERNARD M. JONES
UNITED STATES DISTRICT JUDGE